



## FROM THE COMMITTEE ON MODEL CRIMINAL JURY INSTRUCTIONS

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The Committee solicits comment on the following proposal by December 1, 2015. Comments may be sent in writing to Samuel R. Smith, Reporter, Committee on Model Criminal Jury Instructions, Michigan Hall of Justice, P.O. Box 30052, Lansing, MI 48909-7604, or electronically to [MCrimJI@courts.mi.gov](mailto:MCrimJI@courts.mi.gov).

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### PROPOSED

The Committee proposes an instruction where a defendant has been charged with accosting a minor for immoral purposes under MCL 750.145a. This instruction is entirely underlined because it is a completely new instruction.

#### **[NEW] M Crim JI 20.40 Accosting a Child for Immoral Purposes**

(1) The defendant is charged with accosting a child for an immoral purpose. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant [accosted, enticed, or solicited<sup>1</sup> / encouraged] [name complainant].

[Choose either (3) or (4), depending on the age of the complainant:]

(3) Second, that [name complainant] was 15 years old or younger. It does not matter whether the defendant knew [name complainant]'s age.

(4) Second, that the defendant believed [name complainant] to be 15 years old or younger. It does not matter if [name complainant] was older as long as the prosecutor proves that the defendant believed [name complainant] to be 15 years old or younger.

[Choose either (5) or (6):]

(5) Third, that when the defendant accosted, enticed, or solicited [name complainant], [he / she] intended to induce or force [name complainant] to [commit an immoral act / submit to or engage in sexual intercourse / submit to or engage in an act of gross indecency / submit to or engage in an act of depravity / engage in an act of delinquency].<sup>2</sup>

(6) Third, that the defendant encouraged [name complainant] to [commit an immoral act / submit to or engage in sexual intercourse / submit to or engage in an act of gross indecency / submit to or engage in an act of depravity / engage in an act of delinquency].<sup>2</sup>

(7) It does not matter whether [name complainant] actually committed the act, or engaged in or submitted to it. But, the prosecutor must prove that the defendant [intended to cause / encouraged] [name complainant] to commit, engage in, or submit to the act.

### Use Note

1. The court may choose to provide dictionary definitions for these terms at this point, or may do so if asked for definitions by the jury or the parties.

2. The statute does not define any of these acts. No statute or case law defines the phrases “immoral act” or “act of depravity” (though the phrase “immoral act” was tied to sexual intercourse between a male child and a female adult in *People v Riddle*, 322 Mich 199, 33 NW2d 759 (1948), and to an act of “gross indecency” in *People v Pippin*, 316 Mich 191, 25 NW2d 164 (1946)). MCL 750.520a(r) equates sexual intercourse with sexual penetration (which also includes cunnilingus, fellatio and anal intercourse). In *People v Tennyson*, 487 Mich 730, 790 NW2d 354 (2010), the Supreme Court associated an “act of delinquency” with violation of a statute or ordinance by a minor. The meaning of “gross indecency” was discussed in *People v Lino*, 447 Mich 567, 527 NW2d 434 (1994).

### Reference Guide

#### Statutes

MCL 750.145a.

#### Case Law

*People v Kowalski*, 489 Mich 488, 803 NW2d 200 (2011); *People v Gaines*, 306 Mich App 289, 856 NW2d 222 (2014).